

# Jesselyn Radack at FFF Conference 2008, 5 of 6

<https://www.youtube.com/watch?v=hEuS8ybUn1w> (<https://www.youtube.com/watch?v=hEuS8ybUn1w>)

Uploaded by [The Future of Freedom Foundation](https://www.youtube.com/channel/UCqOG4zIDmbIUk12Fzwg5tLA) (<https://www.youtube.com/channel/UCqOG4zIDmbIUk12Fzwg5tLA>) on Thu Sep 25 2008.

Jesselyn Radack on "Conscience Over Career: The Prosecution of the American Taliban" at the Future of Freedom Foundation's <http://fff.org> Restoring the Republic, 2008.

Jesselyn Radack is a former U.S. Department of Justice ethics adviser who came to prominence as a whistleblower after she objected to the government's treatment of John Walker Lindh (the "American Taliban" captured during the 2001 invasion of Afghanistan), having argued that, since a lawyer had been retained to represent him, he could not be interrogated without that lawyer present.

Playlist of Radack's lecture: [http://www.youtube.com/view\\_play\\_list?p=8098DDCFDF68A64D](http://www.youtube.com/view_play_list?p=8098DDCFDF68A64D)

---

[00:00:00 \(https://www.youtube.com/watch?v=hEuS8ybUn1w\)](https://www.youtube.com/watch?v=hEuS8ybUn1w)

I just want to get a clarification to understand your situation at the time is it correct that you were not a prosecutor you're in a separate office within the Justice Department is that correct I was in an independent office within the Department of Justice I was not on the prosecution team we gave ethics advice prospectively to attorneys who were involved in cases to try to keep them out of trouble and try to keep them from getting in trouble later on you don't want them to be sanctioned or disciplined by the judge or you know given ethics trouble later and even if they do mess up we would still help them try to figure out how to correct that by sealing off an interview or creating a taint team to look at information that we got the wrong way and that kind of thing so no I was I was an ethics attorney the legal advisor who happened to be called on that morning Friday when you took the job is it because that you felt that that federal prosecution of federal crimes was a particularly important thing and and if so have your view of that changed from this circus experience yeah when I originally went to work for the Justice Department like I said I was very much the government wears a white hat and as does the right thing and is on the right side and naive about that when I switched to the ethics office that was really

[00:02:00 \(https://www.youtube.com/watch?v=hEuS8ybUn1w&t=120s\)](https://www.youtube.com/watch?v=hEuS8ybUn1w&t=120s)

the ethics office that was really because i had done constitutional tort litigation for four years and at that point I had two small babies and litigating was incompatible with flying all over the country and crazy deadlines and litigation and i liked the ethics stuff it was very interesting to me and they were opening this new ethics office and I thought that would be a good match and I felt like for the first couple years it was good match I didn't feel a huge change between Reno Justice Department and the Ashcroft Justice Department I mean granted Reno was much more she was very open very kind of glass toast let's hold hands and kumbaya yes she was a lot more open and Ashcroft like two very top-down corporate structure but for me the real sea change of the department was after 911 when everything I think went out the window and it was a man we you've heard the language all the time we're in a new kind of era it's a new kind of war we need new techniques we need new this and knew that and yeah maybe we have to do some things differently but we have a way of doing that by going to Congress and fixing the law and not by doing it in secret not by enacting the Patriot Act which no one read which was essentially a Christmas tree of you know a lot of people a wish list of a small minority of people who wanted the kind of government that we have right now today Jesslyn would you talk a little bit about the gag order that was placed on Lynn is part of the plea bargain which seemed to be kind of an unusual thing yeah it it would seem to be an unusual thing but the gag orders that

[00:04:01 \(https://www.youtube.com/watch?v=hEuS8ybUn1w&t=241s\)](https://www.youtube.com/watch?v=hEuS8ybUn1w&t=241s)

unusual thing but the gag orders that have a company not only lens case first of all what does is say it basically says he's prohibited from talking about this not only I mean often there may be something saying that a defendant is prohibited from profiting from what they've done by writing a book or selling the movie rights or something like that but no this is he is prohibited from talking about it ever with anyone with his eventual wife if he were to get married and it doesn't matter that me and you and God knows who can talk about it over the internet he specifically is not allowed to talk about it ever and the use of gag orders in these plea bargains has been just seen an astronomical increase just like the use of the state-secrets privilege which was invoked maybe 25 times during the 20th century and has been invoked to more than 38 times in the last eight years so right now the gag orders a lot of people are gagged from talking about certain things there are certain things I cannot talk to you about and I can't say anything more than that sibel edmonds is gagged there are a lot of people who are gagged even when there's been no conviction because something that is in our brain happens to touch on something that someone deems to be national security so puts people in a very odd position I'm like huh how come the whole world gets to see the T word but I don't get too and it's a strange universe but the gag order that was placed on Lind has been used in a lot of other terrorism plea bargains yes I was

[00:06:03 \(https://www.youtube.com/watch?v=hEuS8ybUn1w&t=363s\)](https://www.youtube.com/watch?v=hEuS8ybUn1w&t=363s)

terrorism plea bargains yes I was wondering I took quick questions one do you think there will be some First Amendment Free Speech channel just as challenges to these gag orders going to be coming up and the second one is were you in the office the ethics officer when under when Reno was in the Clinton administration when the Waco incident at all took no I was not I was doing constitutional tort litigation when the Waco thing right it happened right when I joined and then we had Waco and Ruby Ridge and a number of debacles I would they didn't have the ethics office at that point the ethics office was actually people confuse it all the time with the Office of Professional Responsibility they're the back end of the ethics they will discipline you after the fact once you've screwed up this new office was created in 1999 with the very similar name called the Professional Responsibility advisory office and it was created basically because of the mcdade Amendment which Joe mcdade had had sponsored because of his experience of government overreaching and the McDaid Amendment said that prosecutors had to abide by not only their own State Bar ethics rules but the ethics rules of any state in which they litigated so for a number of prosecutors who barely knew their own ethics rules suddenly they had to know the ethics rules of whatever state they happen to be in and so we were there to help them figure that out and try to help keep them out of out of trouble so yeah that office didn't even get created until 1999 and I think its utility quickly I think it's just a dead letter office right now I mean it still exists but I the first and First Amendment challenges here's what's

[00:08:01 \(https://www.youtube.com/watch?v=hEuS8ybUn1w&t=481s\)](https://www.youtube.com/watch?v=hEuS8ybUn1w&t=481s)

Amendment challenges here's what's happening with that there have been a number of First Amendment challenges to both the gag orders sibel had a First Amendment challenge sibel edmonds who had been an FBI translator she had a First Amendment challenge it went all the way up to the Supreme Court the government blocked it all over all at every stage by asserting the state secrets privilege we can't litigate this because it's going to reveal a state secret the other challenges that involve First Amendment or 4th amendment also like the warrantless wiretapping again those have been blocked completely by the government asserting the state secrets privilege again there isn't really a state secrets privilege in the United States this is just something that's kind of been kind of out there and brought up here and there but it has an I mean there isn't really such a privilege it's been brought up here and there and some very high-profile superseded great cases but the government's just asserting it left and right so when you do hear the First Amendment challenges and the Fourth Amendment challenges to what's going on they say state secrets privilege and they usually slap a gag order on you too and then if you try to challenge the gag order again we can't allow a challenge it will violate the state secrets privilege she wants to talk about something that

touches on national security granted everyone in the world is talking about what the bell exposed but she herself she can talk about it up to a certain point and we all have a team of lawyers that we consult with about okay what can I say about this what can I write about this but

---

END